

AMENDED IN ASSEMBLY JANUARY 9, 2006

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 827

Introduced by Assembly Member Goldberg

February 18, 2005

An act to amend Section ~~94838~~ 94831 of the Education Code, relating to private postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 827, as amended, Goldberg. Private postsecondary education: ~~instruments of indebtedness: tuition loans consumer credit regulations.~~

Existing

(1) Existing law, known as the Private Postsecondary and Vocational Education Reform Act of 1989, generally sets minimum standards of instructional quality, ethical and business practices, health and safety, and fiscal responsibility for private postsecondary and vocational educational institutions, as defined. The act establishes the Bureau for Private Postsecondary and Vocational Education, which, among other things, is required to review and investigate all institutions, programs, and courses of instruction approved under the act. A provision of the act renders it inoperative on July 1, 2007, and provides for its repeal on January 1, 2008.

An existing provision of the act prohibits a private postsecondary or vocational institution *that is subject to the act* from ~~enforcing a note, other instrument of indebtedness, or contract relating to payment for educational services unless, at the time of the execution of the note, instrument, or contract, the institution has a valid approval to operate~~

~~under the law and the note, instrument, or contract meets other specified requirements taking any of various specified actions or from failing to comply with federal requirements relating to the disclosure of information to students regarding vocational and career training programs. A violation of this provision is punishable as a crime.~~

This bill would also prohibit a private postsecondary or vocational institution *that is subject to the act* from ~~enforcing a tuition loan, as defined, unless these specified requirements are met~~ failing to comply with a specified federal regulation relating to the notices required to be continued in a consumer credit contract, thereby imposing a state-mandated local program by creating a new crime.

(2) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 94831 of the Education Code is
2 amended to read:

3 94831. No institution, or representative of that institution,
4 shall do any of the following:

5 (a) Operate in this state a postsecondary educational institution
6 not exempted from this chapter, unless the institution is currently
7 approved to operate pursuant to this chapter. ~~The council bureau~~
8 may institute an action, pursuant to Section 94955, to prevent any
9 individual or entity from operating an institution in this state that
10 has not been approved to operate pursuant to this chapter and to
11 obtain any relief authorized by that section.

12 (b) Offer in this state, as or through an agent, enrollment or
13 instruction in, or the granting of educational credentials from, an
14 institution not exempted from this chapter, whether that
15 institution is within or outside this state, unless that agent is a
16 natural person and has a currently valid agent's permit issued
17 pursuant to this chapter, or accept contracts or enrollment
18 applications from an agent who does not have a current permit as

1 required by this chapter. The ~~council~~ *bureau*, however, may
2 adopt regulations to permit the rendering of legitimate public
3 information services without a permit.

4 (c) Instruct or educate, or offer to instruct or educate,
5 including soliciting for those purposes, enroll or offer to enroll,
6 contract or offer to contract with any person for that purpose, or
7 award any educational credential, or contract with any institution
8 or party to perform any act, in this state, whether that person,
9 agent, group, or entity is located within or without this state,
10 unless that person, agent, group, or entity observes and is in
11 compliance with the minimum standards set forth in this article
12 and Article 7 (commencing with Section 94850), if it is
13 applicable, ~~the criteria established by the council pursuant to~~
14 ~~subdivision (b) of Section 94773, and the regulations adopted by~~
15 ~~the council pursuant to subdivision (c) of Section 94773.~~

16 (d) Use, or allow the use of, any reproduction or facsimile of
17 the Great Seal of the State of California on any diploma.

18 (e) Promise or guarantee employment.

19 (f) Advertise concerning job availability, degree of skill and
20 length of time required to learn a trade or skill unless the
21 information is accurate and in no way misleading.

22 (g) Advertise, or indicate in any promotional material, that
23 correspondence instruction, or correspondence courses of study
24 are offered without including in all advertising or promotional
25 material the fact that the instruction or programs of study are
26 offered by correspondence or home study.

27 (h) Advertise, or indicate in any promotional material, that
28 resident instruction, or programs of study are offered without
29 including in all advertising or promotional material the location
30 where the training is given or the location of the resident
31 instruction.

32 (i) Solicit students for enrollment by causing any
33 advertisement to be published in "help wanted" columns in any
34 magazine, newspaper, or publication or use "blind" advertising
35 that fails to identify the school or institution.

36 (j) Advertise, or indicate in any promotional material, that the
37 institution is accredited, unless the institution has been
38 recognized or approved as meeting the standards established by
39 an accrediting agency recognized by the United States

1 Department of Education or the Committee of Bar Examiners for
2 the State of California.

3 (k) Fail to comply with federal requirements relating to the
4 disclosure of information to students regarding vocational and
5 career training programs, as described in Section 94816.

6 (l) *Fail to comply with Part 433 commencing with Section*
7 *433.1 of Title 16 of the Code of Federal Regulations as it exists*
8 *on January 1, 2007, and as it is amended from time to time*
9 *thereafter.*

10 SEC. 2. *No reimbursement is required by this act pursuant to*
11 *Section 6 of Article XIII B of the California Constitution because*
12 *the only costs that may be incurred by a local agency or school*
13 *district will be incurred because this act creates a new crime or*
14 *infraction, eliminates a crime or infraction, or changes the*
15 *penalty for a crime or infraction, within the meaning of Section*
16 *17556 of the Government Code, or changes the definition of a*
17 *crime within the meaning of Section 6 of Article XIII B of the*
18 *California Constitution.*

19 SECTION 1. ~~Section 94838 of the Education Code is~~
20 ~~amended to read:~~

21 ~~94838. (a) No note, other instrument of indebtedness, or~~
22 ~~contract relating to payment for educational services shall be~~
23 ~~enforceable by any institution within or outside this state~~
24 ~~governed by this chapter, and no tuition loan shall be~~
25 ~~enforceable, unless at the time of execution of that note, other~~
26 ~~instrument of indebtedness, tuition loan, or contract, the~~
27 ~~institution has a valid approval to operate pursuant to this~~
28 ~~chapter.~~

29 ~~(b) No note, other instrument of indebtedness, or contract~~
30 ~~relating to payment for educational services shall be enforceable~~
31 ~~by any institution within or outside this state governed by this~~
32 ~~chapter, and no tuition loan shall be enforceable, unless the~~
33 ~~agent, who enrolled persons to whom educational services were~~
34 ~~to be rendered or to whom degrees or diplomas were to be~~
35 ~~granted pursuant to this chapter, held a valid agent's permit at the~~
36 ~~time of execution of the note, other instrument of indebtedness,~~
37 ~~tuition loan, or contract.~~

38 ~~(c) Any school or institution governed by this chapter~~
39 ~~extending credit or lending money to any person for tuition, fees,~~
40 ~~or any charges whatever for educational services to be rendered~~

1 or furnished shall cause any note, instrument, or other evidence
2 of indebtedness taken in connection with that loan or extension
3 of that credit to be conspicuously marked on the face thereof with
4 the following notice:

5
6 “NOTICE
7

8 ~~ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT~~
9 ~~IS SUBJECT TO ALL CLAIMS AND DEFENSES THAT THE~~
10 ~~DEBTOR COULD ASSERT AGAINST THE SELLER OF~~
11 ~~GOODS OR SERVICES OBTAINED PURSUANT HERETO~~
12 ~~OR WITH THE PROCEEDS HEREOF, RECOVERY~~
13 ~~HEREUNDER BY THE DEBTOR SHALL NOT EXCEED~~
14 ~~AMOUNTS PAID BY THE DEBTOR HEREUNDER.”~~

15 -

16 In the event the school or institution fails to do so, it shall be
17 liable for any damage or loss suffered or incurred by any
18 subsequent assignee, transferee, or holder of that evidence of
19 indebtedness on account of the absence of that notification.

20 (d) ~~Notwithstanding the presence or absence of the notification~~
21 ~~described in subdivision (c), and notwithstanding any agreement~~
22 ~~in which the student waives the right to assert any claim or~~
23 ~~defense, the school or institution making that loan or extending~~
24 ~~that credit and the transferee, assignee, or holder of that evidence~~
25 ~~of indebtedness, shall be subject to all defenses and claims that~~
26 ~~could be asserted against the school or institution that was to~~
27 ~~render or furnish those educational services by any party to that~~
28 ~~evidence of indebtedness or by the person to whom these~~
29 ~~educational services were to be rendered or furnished up to the~~
30 ~~amount remaining to be paid thereon.~~

31 (e) ~~Institutions that participate in federal student assistance~~
32 ~~programs and that comply with the financial disclosure and~~
33 ~~notification requirements for those programs shall be deemed to~~
34 ~~be in compliance with the standards prescribed by this section.~~

35 (f) (1) ~~For the purposes of this section, “tuition loan” means a~~
36 ~~loan that the creditor knows, at the time the loan is made, is to be~~
37 ~~used, in whole or in part, to finance all or a portion of the tuition,~~
38 ~~fees, or charges for educational services that are subject to this~~
39 ~~chapter.~~

1 ~~(2) The creditor shall be deemed to know that the tuition loan~~
2 ~~is to be used, in whole or in part, to finance all or a portion of the~~
3 ~~tuition, fees, or charges for educational services under any of the~~
4 ~~following circumstances:~~

5 ~~(A) The loan application or other documents in the creditor's~~
6 ~~possession before the loan is made indicate that any loan~~
7 ~~proceeds will be used to pay for tuition, fees, or charges for~~
8 ~~educational services subject to this chapter.~~

9 ~~(B) The creditor distributes any loan proceeds to a school or~~
10 ~~institution that is subject to this chapter.~~

11 ~~(C) The school or institution arranges or guarantees the loan,~~
12 ~~or receives from the creditor a commission, brokerage fee, or~~
13 ~~referral fee.~~

14 ~~(D) The creditor knows, or by the exercise of reasonable care~~
15 ~~has reason to know, that the school or institution participates in~~
16 ~~the preparation of the student's application for credit or other~~
17 ~~loan documents, or transmits the student's application for credit~~
18 ~~or other loan documents to the creditor.~~

19 ~~SEC. 2.— If any provision of this act or the application thereof~~
20 ~~to any person or circumstance is held to be unconstitutional, the~~
21 ~~remainder of the act and the application of that provision to other~~
22 ~~persons and circumstances shall not be affected thereby~~